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JANICE MAYES,
MINORITY CHIEF COUNSEL

October 23, 2013

The Honorable Sylvia Mathews Burwell
Director
Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Director Burwell:

We are writing to encourage you to take steps to ensure that recently furloughed Federal employees who have been awarded full back pay are not allowed to also collect and keep unemployment benefits, which would be a totally unfair form of double dipping.

Under Title 5 U.S. Code Chapter 85, the Unemployment Compensation for Federal Employees (UCFE) program authorizes benefits for eligible unemployed former civilian Federal employees. Unlike with private employment, no payroll taxes are collected in advance to support these benefits for Federal employees; instead, Federal agencies are charged as needed when benefits are payable. During the recent lapse in appropriations, some furloughed Federal employees applied for and have received benefits under UCFE.

On Thursday, October 17, 2013, Public Law 113-46, the Continuing Appropriations Act, provided retroactive pay for government employees who had been furloughed since the start of the fiscal year. Specifically, Sec. 115 (a) of this legislation states: "Employees furloughed as a result of any lapse in appropriations which begins on or about October 1, 2013, shall be compensated at their standard rate of compensation, for the period of such lapse in appropriations, as soon as practicable after such lapse in appropriations ends" [emphasis added].

Most States notified furloughed Federal employees in writing that if retroactive pay was provided, their unemployment benefits would be deemed an overpayment that would need to be recovered. However, a recent news article¹ stated that although Federal employees have since received compensation for the period of the lapse in appropriations, because they were not "performing a service" in exchange for this compensation they may still be eligible to collect unemployment benefits in some States.

¹ Davidson, Paul. (2013, 19 October). Some Furloughed Federal Workers May Double Dip. *USA Today*. Retrieved October 21, 2013, from <http://www.usatoday.com/story/money/business/2013/10/19/Federal-workers-shutdown-back-pay/3020525/>

This makes absolutely no sense. Since unemployment benefits are keyed to replace roughly half of an employee's prior pay, this practice would amount to paying furloughed federal employees time and a half for not working.

Fortunately, it is within your authority to prevent this from happening. Specifically, you could provide Federal findings to States that paying unemployment benefits – on top of back pay – to recently furloughed Federal employees would constitute a misuse of taxpayer funds, and that any benefits that have been paid should be recovered. According to 5 CFR 609.6(e)(3):

“If Federal findings received by a State agency after a determination has been made under this section contain information which would result in a change in the individual's eligibility for or entitlement to UCFE, the State agency promptly shall make a redetermination and notify the individual, as provided in this section. All payments of UCFE made prior to or after such redetermination shall be adjusted in accordance therewith.”

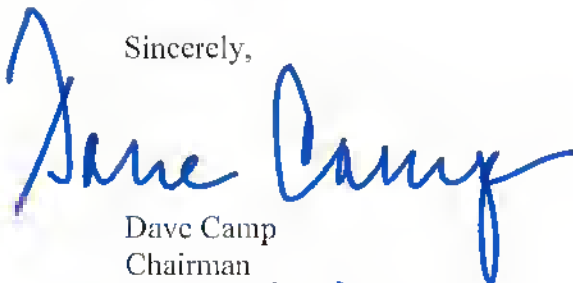
As the reimbursing employer responsible for the unemployment benefit charge (see 5 U.S.C 8509(c)(1)), we strongly encourage you to challenge these charges during the benefit redeterminations under 5 CFR 609.6(e)(3) so that we maintain the integrity of the unemployment insurance system for those it is intended to serve – unemployed individuals who have been laid off through no fault of their own, and not temporarily furloughed Federal employees who have already received full back pay.

To better understand this situation and your subsequent actions on this matter, we also request that you respond in writing with the following:

1. A summary of any unemployment benefit charges resulting from Federal employees furloughed during the period of October 1-16, 2013;
2. The Federal agencies from which the charges were due; and
3. The States to which the charges were sent.

We look forward to working with the Administration to identify a permanent solution to this issue. In the meantime, we strongly encourage you to challenge any unemployment benefit charges for Federal employees who have already received full back pay for the period in question.

Sincerely,




Dave Camp
Chairman



Sam Johnson
Member of Congress



Dave Reichert
Chairman, Subcommittee on Human Resources



Kevin Brady
Member of Congress



Paul Ryan
Member of Congress



Patrick J. Tiberi
Member of Congress



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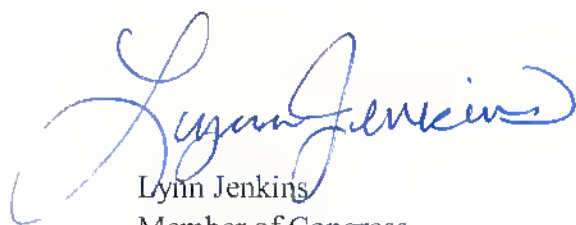
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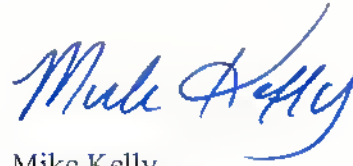
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Secretary Jacob Lew, Department of Treasury
Acting Director Elaine Kaplan, Office of Personnel Management